

REMARKS

This paper is in response to the final official action dated September 7, 2007 (“the final action”). This paper is timely-filed as it is accompanied by a petition for an extension of time and authorization to charge our deposit account no. 13-2855 in the amount of the requisite extension fee.

Claims 1 and 4-12 are pending, but claim 5 has been withdrawn from consideration. By the foregoing, independent claims 1 and 6 have been amended. No new matter has been added.

Claims 1, 4, and 6-12 have been rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the written description requirement. Claims 1, 4, and 6-12 have also been rejected under 35 U.S.C. §103(a) as assertedly unpatentable over Mühlradt et al., *J. Exp. Med.*, 185:1951-1958 (1997) (“Mühlradt”) in view of international patent publication no. WO 98/27110 and U.S. Patent 4,916,118 to Fidler et al. (“Fidler”). Claims 1, 4, and 6-12 have also been provisionally rejected for obviousness-type double patenting over claims 1-3, 6-8, 10, and 11 of copending patent application serial no. 10/509,917 in view of Mühlradt. Finally, claims 1, 4, and 6-12 have been rejected under 35 U.S.C. §112, second paragraph, as assertedly indefinite.

The various bases for the claim rejections are addressed below in the order presented in the final action. Reconsideration of the application is requested in view of the following remarks.

CLAIM REJECTIONS – 35 U.S.C. §112, 1ST PARAGRAPH

Claims 1, 4, and 6-12 have been rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the written description requirement. The applicants respectfully traverse the rejections.

The examiner responded to applicants’ comments relating to mistakenly attributing their experimental results for lipopeptides or lipoproteins having the “R” configuration to lipopeptides or lipoproteins having the “S” configuration and vice versa by expressing doubt as to “‘what is right and what is wrong’ and what has written description and what does not.” See page 3 of the official action.

In response, the applicants respectfully submit that the instant specification demonstrates their possession of methods of treating a wound in an animal comprising administering lipopeptides or lipoproteins in accordance with the structure shown in claim 1, whether the lipopeptide or lipoprotein has the absolute R configuration, as recited in claim 1, or the absolute S configuration. In this regard, the applicants direct the examiner's attention to example 3, which demonstrates their possession of methods of treating animals with different enantiomers of the same lipopeptide.

As previously suggested above, the applicants merely mistakenly attributed their results for the lipopeptides or lipoproteins having the R configuration to lipopeptides or lipoproteins having the S configuration and vice versa. In support of this assertion, in response to the examiner's request for evidence supporting same, the examiner's attention is directed to paragraph [0038] of U.S. Patent Publication No. 2004/0127405 to Muhlradt *et al.*, which describes the consequences of applicants' reliance on Metzger *et al.*, *J. Medicinal Chem.*, 34:1969-1974 (1991) and is wholly consistent with applicants' previous statements.

Because the inventors' possession of the claimed subject matter has been established, the written description rejections of claims 1, 4, and 6-12 should be removed.

CLAIM REJECTIONS – 35 U.S.C. §103

All pending claims 1-12 have been rejected under 35 U.S.C. §103(a) as obvious over Mühradt in view of WO 98/27110 and Fidler. The applicants respectfully traverse the rejections for the reasons provided in the response dated February 14, 2007 (received by the office on February 20, 2007). Consideration thereof is respectfully requested.

CLAIM REJECTIONS – DOUBLE PATENTING

The applicants will address these provisional rejections if and when they should become mature.

CLAIM REJECTIONS – 35 U.S.C. §112, 2ND PARAGRAPH

The applicants previously amended the claims to address the examiner's concerns (for example, by deleting SEQ ID NO. 8 from claim 10 in the previous response). The examiner's comments regarding SEQ ID NO:10 at page 9 of the

action are not well understood as they appear to be in conflict with one another. In response, the applicants submit that SEQ ID NO:10 is definite and consistent with the other limitations recited in claim 1. For example, SEQ. ID NO:10 is in the absolute configuration "R," as indicated by the designation (2R) recited therein.

Further, applicants submit that SEQ ID NO:7 falls within the scope of claim 1 because the racemic mixture of SEQ ID NO:7 necessarily comprises a lipopeptide or lipoprotein having the (R) configuration recited by claim 1.

Finally, SEQ ID NO:3 is definite and consistent with the other claim limitations. In this regard, the applicants submit that the asymmetric carbon recited in the claims does not correspond to any of the amino acids of Y (SEQ ID NO:3).

Accordingly, the rejections of claims 1, 4, and 6-12 as assertedly indefinite should be withdrawn.

CONCLUSION

It is submitted that the application is in condition for allowance. Should the examiner wish to discuss any matter of form or procedure in an effort to advance this application to allowance, he is respectfully invited to telephone the undersigned attorney at the indicated telephone number.

Respectfully submitted,

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